1990

State of Utah v. Mark Caldwell : Petition for Writ of Certiorari

Utah Supreme Court

J. Franklin; Attorney for Respondent.
R. Paul Van Dam; Attorney General; David B. Thompson; Assistant Attorney General; Attorneys for Petitioner.

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Petitioner,	:	Case No. 900441
v.	:	
MARK CALDWELL,	:	Category No. 13
Defendant-Respondent.	:	

PETITION FOR WRIT OF CERTIORARI TO THE UTAH COURT OF APPEALS

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THIS IS A PETITION FOR WRIT OF CERTIORARI TO THE UTAH COURT OF APPEALS FROM ITS ORDER DISMISSING THE STATE'S APPEAL.

R. PAUL VAN DAM (3312)
Attorney General
DAVID B. THOMPSON (4159)
Assistant Attorney General
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Salt Lake City, Utah 84114
Telephone: (801) 538-1021

Attorneys for Petitioner

J. FRANKLIN ALLRED
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Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Petitioner,	:	Case No.
v.	:	
MARK CALDWELL,	:	Category No. 13
Defendant-Respondent.	:	

PETITION FOR WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

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Attorney for Respondent

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STATE OF UTAH,	:	
Plaintiff-Petitioner,	:	Case No.
v.	:	
MARK CALDWELL,	:	Category No. 13
Defendant-Respondent.	:	

PETITION FOR WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

The sole question presented for review is whether the court of appeals incorrectly dismissed the State's appeal as moot.

OPINION BELOW

The court of appeals' order of dismissal was issued on August 22, 1990 (a copy of the order is contained in Appendix A).

JURISDICTION OF THIS COURT

This Court has jurisdiction to consider this petition under Utah Code Ann. § 78-2-2(3)(a) (Supp. 1990).

STATEMENT OF THE CASE

Defendant, Mark Caldwell, was charged with arranging to distribute a controlled substance, a second degree felony, under Utah Code Ann. § 58-37-8(1)(a)(ii) (1990).

After the State had presented its evidence at trial, defendant moved to dismiss the charge against him. The court

granted defendant's motion and entered a judgment of dismissal. Thereafter, the State filed a motion to set aside the judgment of dismissal, which the court denied.

The State appealed the trial court's dismissal to the Utah Court of Appeals, filing its brief on May 16, 1990 (a copy of the State's brief is contained in Appendix B). After defendant filed a document entitled "Notice of Non-Response of Appellee" (a copy of which is contained in Appendix C) on July 3, 1990, the court of appeals issued an order dated July 13, 1990 (a copy of which is contained in Appendix D), which stated that the court had elected to treat defendant's "notice as a Suggestion of Mootness" and that the State was required to file a response thereto. After the State filed a response (a copy of which is contained in Appendix E), the court of appeals issued its order dismissing the State's appeal as moot.

STATEMENT OF FACTS

A recitation of the facts of defendant's crime is not necessary for purposes of this petition. The relevant facts are those stated in the Statement of the Case, above, and the additional facts that follow.

As noted to the court of appeals in the State's Response to Suggestion of Mootness (Appendix E), the State, in exchange for defendant's cooperation in the preparation of a partial statement of the case which would be filed in the appellate court in lieu of a transcript of the proceedings in the trial court, agreed not to pursue the matter against defendant any further <u>if</u> the State were to prevail on appeal. The parties

did not enter this agreement with the view that the State's appeal might be dismissed pursuant to a suggestion of mootness filed by defendant. The sole purpose of the agreement was to put before the court of appeals an important question of law[1] supported by a trial court record which would be prepared at the least expense to the parties.

ARGUMENT

THE COURT OF APPEALS ERRONEOUSLY DISMISSED THE STATE'S APPEAL AS MOOT.

The court of appeals erroneously dismissed the State's appeal as moot. "A case is deemed moot when the requested judicial relief cannot affect the rights of the litigants." Burkett v. Schwendiman, 773 P.2d 42, 44 (Utah 1989) (emphasis added). In its appeal to the court of appeals, the State requested that the trial court's dismissal of the charge against defendant be reversed. Because the State's requested relief would clearly affect the State's right to prosecute defendant, the issue concerning the propriety of the charge against defendant is not moot. The State's representation to defendant that it would not pursue further the matter against him was contingent upon the appeal going forward and the court of appeals ruling in its favor. That the State would, in its discretion, not pursue the case against defendant if it prevailed on appeal does not render the appellate issue moot.

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[1] The only issue on appeal was whether the trial court erroneously dismissed the charge against defendant on the ground that a potential purchaser could not, as a matter of law, be guilty of arranging to distribute a controlled substance under Utah Code Ann. § 58-37-8(1)(a)(ii) (1990).

Furthermore, the court of appeals erred in not allowing the State relief from its agreement if that agreement technically rendered the appeal moot. In the court of appeals, the State argued:

> If this Court determines that the agreement between the parties somehow renders the appeal moot, the case should not be dismissed. Rather, the State should be allowed to request a transcript of the proceedings below to replace the partial statement of the case, which was stipulated to by defendant as part of the parties' agreement. The parties did not enter their agreement with the view that the appeal might be dismissed pursuant to a suggestion of mootness filed by defendant. Clearly, that was not the State's intention; nor could that reasonably have been defendant's understanding. The sole pupose of the agreement was to put before this Court an important question of law supported by a trial court record which would be prepared at the least expense to the parties. Indeed, the lack of any reference to rule 37(a), Utah Rules of Appellate Procedure, or of any request for dismissal of the State's appeal in defendant's notice of non-response indicates that defendant did not intend for the document to be treated as a suggestion of mootness.
>
> . . . .
>
> If the Court determines that the agreement between the parties has the effect of rendering the appeal moot, the State should be allowed to perfect the record on appeal outside the context of the agreement and pursue its appeal. By entering the agreement that they did, the parties simply did not intend to preclude the State from taking an appeal due to mootness.

State's Response to Suggestion of Mootness at 2-3 (Appendix E). Based on these arguments, the court of appeals, as a matter of fairness, should have allowed the State to perfect its appeal outside the context of the agreement with defendant.

CONCLUSION

Based on the foregoing arguments, the State's petition for certiorari should be granted pursuant to rule 46(b) & (c), Utah Rules of Appellate Procedure, in that the court of appeals has decided a question of law that is in conflict with decisions of this Court and, in rendering its decision to dismiss, has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

RESPECTFULLY submitted this 21st day of September, 1990.

R. PAUL VAN DAM
Attorney General

David B. Thompson
DAVID B. THOMPSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Petition were mailed, postage prepaid, to J. Franklin Allred, Attorney for Respondent, 321 South 600 East, Salt Lake City, Utah 84102, this 21st day of September, 1990.

David B. Thompson

APPENDICES

APPENDIX A

FILED

AUG 27 1990

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	
	)	
Plaintiff and Appellant,	)	ORDER
	)	
v.	)	Case No. 900066-CA
	)	
Mark Caldwell,	)	
	)	
Defendant and Appellee.	)	

Before Judges Greenwood, Bench, and Davidson (On Law and Motion).

This matter is before the court on its own suggestion of mootness. Based on respondent's statement in lieu of brief, which was adopted by the court as a suggestion of mootness and on the response to the suggestion by the State of Utah as appellant,

IT IS HEREBY ORDERED THAT the appeal is dismissed as moot due to the absence of a case or controversy between the parties to the appeal.

DATED this 21st day of August, 1990.

FOR THE COURT:

Pamela T. Greenwood

Pamela T. Greenwood, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of August, 1990, a true and correct copy of the foregoing ORDER was deposited in the United States mail or personally delivered to each of the parties below.

State Attorney General

Assistant Attorney General
236 State Capitol
B U I L D I N G M A I L

J. Franklin Allred
Attorney at Law
321 South 600 East
Salt Lake City, UT 84102-4082

DATED this 21st day of August, 1990.

By Sheri Brighton
Deputy Clerk

APPENDIX B

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellant,	:	Case No. 900066-CA
v.	:	
MARK CALDWELL,	:	Category No. 2
Defendant-Appellee.	:	

BRIEF OF APPELLANT

- - - - - - -

APPEAL FROM A DISMISSAL OF THE CHARGE OF ARRANGING TO DISTRIBUTE A CONTROLLED SUBSTANCE, A SECOND DEGREE FELONY, IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE MICHAEL R. MURPHY, JUDGE, PRESIDING.

R. PAUL VAN DAM (3312)
Attorney General
DAVID B. THOMPSON (4159)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Appellant

J. FRANKLIN ALLRED
321 South 600 East.
Salt Lake City, Utah 84102

Attorney for Appellee

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff-Appellant,	:	Case No. 900066-CA
v.	:	
MARK CALDWELL,	:	Category No. 2
Defendant-Appellee.	:	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a dismissal of the charge of arranging to distribute a controlled substance, a second degree felony, under Utah Code Ann. § 58-37-8(1)(a)(ii) (1990).

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1989) and rule 26(3)(a), Utah Rules of Criminal Procedure.

STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARD OF APPELLATE REVIEW

The sole issue presented on appeal is whether the trial court erroneously dismissed the charge against defendant on the ground that a potential purchaser could not, as a matter of law, be guilty of arranging to distribute a controlled substance under Utah Code Ann. § 58-37-8(1)(a)(ii) (1990).

Because the trial court's ruling is strictly a legal conclusion, this Court affords it no deference on appeal and applies a "correction of error" standard. Provo City Corporation v. Willden, 768 P.2d 455, 456 (Utah 1989); State v. Wessendorf,

777 P.2d 523, 526 (Utah Ct. App.), cert. denied, 781 P.2d 878 (Utah 1989); State v. Johnson, 771 P.2d 326, 327 (Utah Ct. App.), cert. granted, ___ P.2d ___ (Utah 1989).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Relevant text of statutory provisions pertinent to the resolution of the issue presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Defendant, Mark Caldwell, was charged with arranging to distribute a controlled substance, a second degree felony, under Utah Code Ann. § 58-37-8(1)(a)(ii) (1990) (R. 7).

After the State had presented its evidence at trial, defendant moved to dismiss the charge against him. The court granted defendant's motion and entered a judgment of dismissal (R. 56-58; Partial Statement of the Case (hereafter "Statement") at 3).[1] Thereafter, the State filed a motion to set aside the judgment of dismissal, which the court denied (R. 62-69, 146-48). The State now appeals.

STATEMENT OF FACTS

There is no dispute as to the facts. On April 20, 1989, several undercover police officers were at a residence in

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[1] Pursuant to rule 11(f), Utah Rules of Appellate Procedure, the parties have prepared and submitted to the trial court a partial statement of the case for purposes of this appeal. That statement, which covers the undisputed facts developed at trial and the court's ruling from the bench, should be a part of the record on appeal at the time this case is submitted to the Court for decision.

The trial court's ruling from the bench also appears in a transcript included as an appendix to the State's motion to set aside the judgment of dismissal (see R. 72-86).

Salt Lake County executing a search warrant. At approximately 5:50 in the evening, defendant and a female arrived at the residence and knocked on the door. When one of the officers opened the door and asked what they wanted, defendant responded that he wanted "a half ounce," a request the officer, based on his experience with drug transactions, understood to be one for a half ounce of cocaine. It soon became apparent that defendant in fact desired to purchase cocaine (Statement at 1-2).

The officer asked defendant if he had the money, and defendant gave him a check which appeared to be a tax refund check in the amount of $750 and some change. The officer told defendant that he could not use the check, to which defendant responded that he would go and cash it. When the officer asked defendant if he was sure of what he wanted, defendant said, "Yeah, a half ounce of cocaine." At that point the officer identified himself as a police officer, arrested defendant, and seized the check (Statement at 2).

SUMMARY OF ARGUMENT

In the instant case, defendant attempted to purchase cocaine. Under State v. Ontiveros, 674 P.2d 103 (Utah 1983), and State v. Renfro, 735 P.2d 43 (Utah 1987), he, as a potential purchaser who engaged in the conduct that he did, can be criminally liable under the "arranging" provision contained in Utah Code Ann. § 58-37-8(1)(a)(ii) (1990). That provision, as construed in Ontiveros and Renfro, logically applies to both potential sellers and potential buyers. The trial court erroneously concluded otherwise.

ARGUMENT

POINT I

THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT A POTENTIAL PURCHASER OF A CONTROLLED SUBSTANCE CANNOT BE CRIMINALLY LIABLE UNDER THE "ARRANGING" PROVISION CONTAINED IN UTAH CODE ANN. § 58-37-8(1)(a)(ii) (1990).

The trial court dismissed the charge against defendant on the ground that "[n]one of the sections [of the pertinent Utah statutes] interdict and prohibit the purchase or attempted purchase of drugs if there is no accompanying possession of a drug by the purchaser or attempted purchaser." Statement at 3. This conclusion failed to take into account several key cases decided by the Utah Supreme Court, which were cited to the court by the State in its motion to set aside the judgment (R. 64-69).

Defendant's attempted purchase of a controlled substance clearly violates the "arranging" provision of section 58-37-8(1)(a)(ii), under which he was charged. That section provides in pertinent part that it is unlawful for a person to knowingly and intentionally "agree, consent, offer, or arrange to distribute a controlled or counterfeit substance." In State v. Harrison, 601 P.2d 922 (Utah 1979), the Utah Supreme Court, interpreting the "arranging" provision as it appeared under a prior codification (section 58-37-8(1)(a)(iv)), stated:

> [A]ny witting or intentional lending of aid in the distribution of drugs, whatever form it takes, is proscribed by the act.

601 P.2d at 923 (emphasis added). That one who attempts to purchase a controlled substance can be guilty of arranging is supported by State v. Ontiveros, 674 P.2d 103 (Utah 1983)

(construing former section 58-37-8(1)(a)(iv)). There, the defendant, upon the request of an undercover officer to purchase some marijuana, accompanied the officer to a residence where defendant took the officer's $40, went into the residence, returned shortly thereafter, and delivered a bag of marijuana to the officer. In reversing the defendant's conviction of distributing a controlled substance for value and concluding that this was instead "a classic case of arranging to distribute a controlled substance for value," the Court observed that "[t]he evidence only shows that the [defendant] acted as the officer's agent in making the purchase from a third party." 674 P.2d at 104 (emphasis in original). Obviously, if a purchaser's agent can be guilty of arranging under these circumstances, the purchaser (the principal) also can be guilty of arranging. See Utah Code Ann. § 76-2-202 (1990).

To convict one (including a purchaser) of arranging, the state need not prove a completed transaction. As stated in Harrison:

> Inasmuch as an actual sale took place in this case, it is unnecessary to address the point, but it is noteworthy that the offense of arranging the distribution for value of a controlled substance does not require the actual distribution. All that is needed is the arrangement for such distribution, coupled with knowledge or intent. Evidence of an actual sale may be helpful, or even necessary, in proving knowledge or intent, but sale itself is not an element of the offense.

601 P.2d at 924 n.5. And, the conduct engaged in by defendant in the instant case plainly constitutes the crime of arranging. In State v. Renfro, 735 P.2d 43, 44 (Utah 1987), the Court held that

the defendant, a seller, could be found guilty of arranging where he "discussed the purchase [of marijuana] with officers, set a price for the marijuana, and agreed to make the exchange." Defendant's conduct was nearly identical, the only difference being that he was on the other end of the transaction.

When read together, Ontiveros and Renfro support the conclusion that a potential purchaser, who engages in conduct like that engaged in by defendant, is guilty of arranging under section 58-37-8(1)(a)(ii). The trial court's view that that section is directed at sellers only, see Statement at 2-3, ignores Ontiveros, where the defendant was specifically identified as the purchaser's agent. Indeed, there is no logical reason to distinguish sellers from buyers for purposes of the crime of arranging; the distribution of a controlled substance may be as much arranged by the buyer as by the seller. It is difficult to argue that the middleman in a "classic case of arranging" who merely brings the buyer and seller together, as was the case in Ontiveros and Harrison, is more culpable than the potential purchaser who arranges the transaction himself or herself.

In sum, the trial court failed to consider adequately the facts and holdings of Ontiveros and Renfro in dismissing the charge against defendant. Those cases support an arranging charge, even though defendant was a potential purchaser.

CONCLUSION

Based on the foregoing argument, this Court should reverse the trial court's judgment of dismissal.

RESPECTFULLY submitted this 16th day of May, 1990.

R. PAUL VAN DAM
Attorney General

David B. Thompson
DAVID B. THOMPSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Brief of Appellant were mailed, postage prepaid, to J. Franklin Allred, Attorney for Appellee, 321 South 600 East, Salt Lake City, Utah 84102, this 16th day of May, 1990.

David B. Thompson

APPENDIX C

J. FRANKILN ALLRED, P.C. #A0058
Attorney for Appellee
321 South 600 East
Salt Lake City, Utah 84102
Telephone (801) 531-1900

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff-Appellant, vs. MARK CALDWELL, Defendant-Appellee.	NOTICE OF NON-RESPONSE OF APPELLEE Case No. 900066-CA Category No. 2

The Appellee above-named by and through his Attorney J. Franklin Allred, hereby gives Notice to the Appellant that there was no response to the Brief on the grounds and for the reasons that a prior agreement between Appellee and Appellant makes the issues raised by the Appellant moot as to the Appellee and the Appellee elects not to extend the time and the expense to file a Responsive Brief.

DATED this 3rd day of July, 1990.

J. FRANKLIN ALLRED
Attorney for Appellee

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	
	)	
Plaintiff and Appellant,	)	ORDER
	)	
v.	)	Case No. 900066-CA
	)	
Mark Caldwell,	)	
	)	
Defendant and Appellee.	)	

Before Judges Greenwood, Bench and Davidson (On Law and Motion).

This matter is before the court on its own motion pursuant to Utah R. App. P. 37(a).

In lieu of a brief, appellee filed a Notice of Non-Response of Appellee in which he represents "that a prior agreement between Appellee and Appellant makes the issues raised by the Appellant moot as to the Appellee." We elect to treat this notice as a Suggestion of Mootness.

IT IS HEREBY ORDERED THAT appellant, the State of Utah, shall file a response to the suggestion of mootness within ten days of the date of this order, addressing why this appeal should not be dismissed because it does not involve an actual case or controversy between the parties.

DATED this 13th day of July, 1990.

FOR THE COURT:

Pamela T. Greenwood, Judge

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Notice Of Non-Response of Appellee was mailed postage prepaid to David B. Thompson, Assistant Attorney General, 236 State Captiol, Salt Lake City, Utah 84114.

DATED this 2nd day of July, 1990.

J. FRANKLIN ALLRED

APPENDIX D

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of July, 1990, a true and correct copy of the foregoing ORDER was deposited in the United States mail and/or hand delivered.

R. Paul Van Dam
State Attorney General
David B. Thompson
Assistant Attorney General
236 State Capitol
B U I L D I N G M A I L

J. Franklin Allred
Attorney at Law
321 South 600 East
Salt Lake City, UT 84102-4082

DATED this 16th day of July, 1990.

By Sheri Knighton
Deputy Clerk

APPENDIX E

R. PAUL VAN DAM (3312)
Attorney General
DAVID B. THOMPSON (4159)
Assistant Attorney General
Attorneys for Appellant
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1021

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	RESPONSE TO SUGGESTION OF MOOTNESS
Plaintiff-Appellant,	:	
v.	:	
MARK CALDWELL,	:	Case No. 900066-CA
Defendant-Appellee.	:	

This response to defendant's Notice of Non-Response of Appellee, which the Court has chosen to treat as a suggestion of mootness, is filed pursuant to the Court's order of July 15, 1990.

Defendant indicates in his notice that he waives the filing of a responsive brief because "a prior agreement between [him] and [the State] makes the issues raised by the [State] moot as to [him] . . .." That representation is based on an agreement reached between the parties that if the State prevails on appeal, it will not pursue the matter against defendant any further (see Exhibit A, attached hereto, which is a letter memorializing that agreement). This concession by the State was made in exchange for defendant's cooperation in the preparation of a partial statement of the case in lieu of a transcript of the proceedings below.

"A case is deemed moot when the requested judicial relief cannot affect the rights of the litigants." Burkett v. Schwendiman, 773 P.2d 42, 44 (Utah 1989). In its appeal the State has requested that the trial court's dismissal of the charge against defendant be reversed. Because the State's requested relief would clearly affect its right to prosecute defendant, the issue concerning the propriety of the charge against defendant is not moot. The State's representation to defendant that it will not pursue the matter further against him is contingent upon the appeal going forward and this Court ruling in its favor. That the State will, in its discretion, not pursue the case against defendant if it prevails on appeal does not render the appellate issue moot.

If this Court determines that the agreement between the parties somehow renders the appeal moot, the case should not be dismissed. Rather, the State should be allowed to request a transcript of the proceedings below to replace the partial statement of the case, which was stipulated to by defendant as part of the parties' agreement. The parties did not enter their agreement with the view that the appeal might be dismissed pursuant to a suggestion of mootness filed by defendant. Clearly, that was not the State's intention; nor could that reasonably have been defendant's understanding. The sole purpose of the agreement was to put before this Court an important question of law supported by a trial court record which would be prepared at the least expense to the parties. Indeed, the lack of any reference to rule 37(a), Utah Rules of Appellate

Procedure, or of any request for dismissal of the State's appeal in defendant's notice of non-response indicates that defendant did not intend for the document to be treated as a suggestion of mootness.

CONCLUSION

Based upon the foregoing, the Court should not consider the issue raised in the State's appeal to be moot.

If the Court determines that the agreement between the parties has the effect of rendering the appeal moot, the State should be allowed to perfect the record on appeal outside the context of the agreement and pursue its appeal. By entering the agreement that they did, the parties simply did not intend to preclude the State from taking an appeal due to mootness.

DATED this 23rd day of July, 1990.

R. PAUL VAN DAM
Attorney General

David B. Thompson

DAVID B. THOMPSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Response to Suggestion of Mootness was mailed, postage prepaid, to J. Franklin Allred, Attorney for Appellee, 321 South 600 East, Salt Lake City, utah 84102, this 23rd day of July, 1990.

David B. Thompson

EXHIBIT A

OFFICE OF
THE ATTORNEY GENERAL

STATE OF UTAH

R. PAUL VAN DAM - ATTORNEY GENERAL

236 STATE CAPITOL • SALT LAKE CITY, UTAH 84114 • TELEPHONE 801 538-1015 • FAX NO. 801 538 1121

JOSEPH E. TESCH
CHIEF DEPUTY ATTORNEY GENERAL

May 16, 1990

J. Franklin Allred, Esq.
321 South 600 East
Salt Lake City, Utah 84102

Re: State v. Caldwell, Case No. 900066-CA

Dear John:

In accordance with our telephone conversation earlier today, this letter is to inform you that if the State, as appellant, prevails in the above-referenced appeal, neither the Utah Attorney General nor the Salt Lake County Attorney will pursue the matter against Mr. Caldwell any further. Roger Blaylock, Deputy Salt Lake County Attorney, has authorized me to make this representation on behalf of the Salt Lake County Attorney. In exchange, you have agreed to stipulate to the partial statement of the case I have prepared for purposes of this appeal.

Thank you for your cooperation in this matter.

Sincerely,

Dave

DAVID B. THOMPSON
Assistant Attorney General
Chief, Governmental Affairs Div.

DBT/pa

cc: Roger Blaylock